

RESOLUTION NUMBER R-304981

DATE OF FINAL PASSAGE JUNE 9, 2009

RESOLUTION GRANTING THE APPEAL AND DENYING MITIGATED NEGATIVE DECLARATION NO. 54384 INCLUDING MMRP, AND DIRECTING THAT AN ENVIRONMENTAL IMPACT REPORT BE PREPARED FOR THE PACIFIC COAST OFFICE BUILDING PROJECT.

WHEREAS, the Pacific Coast Office Building project application was submitted to the City on November 8, 2004, for a Mission Valley Site Development Permit to develop a 10,000 square-foot office building on a portion of a 4.94-acre site of the Pacific Coast Office Building Project; and

WHEREAS, the property, located at 3517 Camino del Rio South, has a permit history dating back to 1961 when the site was subdivided into two lot configurations with a public right-of-way dedication for a City street. The subdivision included Lot 1 and Lot 2. Lot 2 is located at 3511 Camino Del Rio South, and is currently developed with a commercial office building. Lot 1 is the subject of this appeal; and

WHEREAS, in 1977 the City Council approved a rezoning action and a planned commercial development permit for the property which converted the site from low-density residential to commercial land use and permitted a three and one-half story structure and related parking. This entitlement included a condition that required the property owner to dedicate the upper 3.8 acres (76 percent) of the hillside lot as an open space easement in favor of the City. The City accepted the dedication and that portion of the site remains residentially zoned. The City also accepted the right-of-way easement to access the lower remaining 1.1-acre commercial property and this was improved as Schiedler Way. Two extensions of time were approved for the

development permit, however, no construction was ever initiated and the entitlement expired;
and

WHEREAS, through November 2004, and December 2008, the project was approved by the Hearing Officer, appealed and subsequently approved by the Planning Commission. The environmental determination to prepare Mitigated Negative Declaration No. 54384 was appealed to the City Council which voted to remand the project back to the Planning Commission for further analysis and consideration. The Planning Commission reaffirmed their approval of the project and the environmental determination was again appealed to the City Council. On December 4, 2007, the City Council vote resulted in a tie (4-4) which at the time was determined to be a de facto approval of the appeal; and

WHEREAS, the applicant subsequently filed a lawsuit against the City, and on April 13, 2009, the Court issued an order finding that “the City Council must, by a majority vote, either: 1) deny the appeal, uphold the environmental determination and adopt the CEQA findings of the previous decision-maker or 2) grant the appeal and make a superseding environmental determination or CEQA finding;” and

WHEREAS, on May 17, 2007, the Planning Commission of the City of San Diego certified Mitigated Negative Declaration No. 54384 for a proposed Site Development/Mission Valley Development Permit; and

WHEREAS, Randy Berkman, Lynn Mulholland, James A. Peugh, Ellen Shively and others, appealed the decision of the Planning Commission to certify Mitigated Negative Declaration No. 54384; and

WHEREAS, the matter was set for a public hearing to be conducted by the Council of the City of San Diego; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the issue was heard by the City Council on June 9, 2009; and

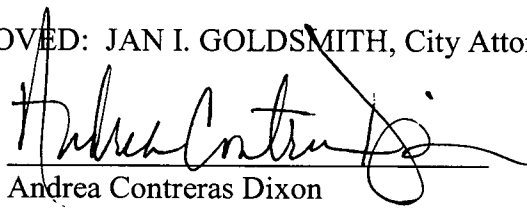
WHEREAS, the City Council considered the issues discussed in Mitigated Negative Declaration No. 54384; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the appeal of Randy Berkman, Lynn Mulholland, James A. Peugh, Ellen Shively and others is granted, and the decision of the Planning Commission to certify Mitigated Negative Declaration No. 54384 is overturned.

BE IT FURTHER RESOLVED, that staff is directed to prepare an environmental impact report for the Pacific Coast Office Building.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Andrea Contreras Dixon
Deputy City Attorney

ACD:cw
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